

RULE

Department of Insurance Office of the Commissioner

Regulation 69—Year 2000 Exclusions (LAC 37:XIII.8705, 8709, 8713-8717, 8721, 8725, 8727, 8731)

As authorized by Title 22:1 et seq. and in accordance with the provisions of LRS 49:950 et seq. of the Administrative Procedure Act, the Commissioner of Insurance hereby amends Regulation 69, which governs the use of Year 2000 Exclusions in this state.

The regulation has been divided into subchapters. Subchapter A contains general provisions. Subchapter B applies only to the admitted market. Subchapter C contains the substantive provisions applicable to the surplus lines market. Subchapter D addresses administrative actions by the Commissioner. All references to reinsurers are being deleted.

Notwithstanding the revisions to this regulation, surplus lines insurers and reinsurers remain subject to all applicable parts of the Insurance Code, including but not limited to Part XXVI, and should act in accordance therewith. Insurers which engage in conduct which is not in the best interest of the public or the policyholder will result in the imposition of sanctions as authorized by law.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 87. Regulation 69—Year 2000 Exclusions

Subchapter A. General Provisions

§8705. Scope and Applicability

A. The scope of application of this regulation differs depending on whether the insurer is an admitted insurer or a surplus lines insurer.

B. Admitted Insurers. Except for Subchapter C, this regulation applies to all admitted property and casualty insurance companies engaged in the business of insurance in this state and governs the use of Y2K exclusions whether issued before, on or after its effective date. It governs all Y2K exclusions affecting contracts of insurance delivered or issued for delivery in this state by admitted insurers which cover property risks or liability risks located in this state, or are to be performed in Louisiana regardless of where made or delivered.

C. Surplus Lines Insurers. Surplus lines insurers must comply with Subchapter C of this regulation. Subchapter B does not apply to surplus line insurers.

(Former subsection C is now the last sentence in subsection A.)

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3, LRS 22:1262 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 25:1256 (July 1999), LR 26:86 (January 2000).

§8709. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein:

Admitted Insurers—means any and all property and casualty insurers authorized to do business in this state pursuant to a Certificate of Authority duly issued by the Commissioner of Insurance for the State of Louisiana.

Commissioner—means the commissioner of insurance for the state of Louisiana.

Surplus Lines Insurers—means insurers placed on the list of approved unauthorized insurers maintained by the Commissioner of Insurance for the State of Louisiana in accordance with LRS 22:1262.1.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1256 (July 1999), LR 26:86 (January 2000).

Subchapter B. Admitted Insurers

§8713. Underwriting Standards

A. - A.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), LR 26:86 (January 2000).

§8715. Monitoring of Market Conduct

A. ...

B. Any admitted insurer, which denies coverage or issues a reservation of rights letter to an insured based in toto or in part upon a Y2K exclusion in the policy must notify the LDOI. The notice must be provided to the LDOI within fifteen (15) days of the denial of coverage or issuance of the reservation of rights letter. A copy of the denial of coverage letter or reservations of rights letter is sufficient notice.

C. The LDOI will closely monitor the use of Y2K exclusions to make certain that they are not used inappropriately by admitted insurers in underwriting or claimshandling. Examples of inappropriate activity are: blanket use of Y2K exclusions; failure to individually underwrite except when authorized by this Regulation; denial of claims inconsistent with underwriting standards; canceling or nonrenewing coverage as a general business practice; widespread unavailability of "buy back" coverage; and, unsupported blanket denial of claims based upon "lack of fortuity", or the "known risk" and/or "expected or intended" exclusions.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq., LRS 22:1301 and LRS 22:1404.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), LR 26:86 (January 2000).

§8717. Representations and Warranties

No representation or warranty may defeat coverage or be used to deny a claim by an admitted insurer unless the representation or warranty is (a) material (b) false) and (c) made with the intent to deceive. Questionnaires used to assess Y2K exposure are subject to this standard. Denial of coverage by an admitted insurer on the grounds that an answer in a questionnaire is erroneous or inadequate, in the absence of fraud, will result in disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:619.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:87 (January 2000).

§8719. Notice

A. No insurance policy may be issued or renewed, by an admitted insurer, with a Y2K exclusion unless the insured is provided with a copy of the Y2K Notice prepared by the LDOI. (The text of the Notice can be found in Section 8719.C.)

B. Notice for renewals must be provided by an admitted insurer not less than sixty (60) days in advance to the insured and the agent of record.

C. Below is the notice required by this Section.

C.1 - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:87 (January 1999).

§8721. Exemptions

A. ...

B. Individual Insureds. An exemption may be granted upon written notification to the LDOI by an admitted insurer regarding an individual policyholder which poses an extraordinary risk due to its failure to take any steps to remedy its Y2K problem. Documentation that demonstrates the necessity for the exemption must be maintained in the insureds file for a period of five (5) years from the date of issuance of the exclusion.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:87 (January 2000).

Subchapter C. Surplus Lines Insurers

§8723. Mandatory Policyholder Notice

A. Every insurance contract issued or delivered as a surplus line coverage in this state, as provided in Part XXVII., Chapter 1. of Title 22 of the Louisiana Revised Statutes, which has a Y2K exclusion shall have attached to it the Policyholder Notice found in Subsection C. of this Section. Insurers are not precluded from issuing their own notices in conjunction with the mandatory notice.

B. Formatting instructions. The caption must be in large type and in bold. The text of the notice should be formatted as shown below and should be in a font of not less than 12 point type.

C. Policyholder Notice Text

IMPORTANT NOTICE FROM (COMPANY)
AND THE LOUISIANA DEPARTMENT OF INSURANCE
PLEASE READ IT!

A NEW ENDORSEMENT HAS BEEN ATTACHED TO YOUR
POLICY. THE NEW ENDORSEMENT DEALS WITH THE "Y2K"
PROBLEM.

USE OF THIS ENDORSEMENT IS GOVERNED BY
LOUISIANA DEPARTMENT OF INSURANCE
REGULATION 69.

IF YOU HAVE QUESTIONS ABOUT THE ENDORSEMENT OR THE
REGULATION YOU MAY CONTACT THE LOUISIANA
DEPARTMENT OF INSURANCE AT THE ADDRESS LISTED BELOW:
COMMISSIONER JAMES H. "JIM" BROWN

LOUISIANA INSURANCE BUILDING
950 NORTH FIFTH STREET
BATON ROUGE, LA 70802

OR BY TELEPHONE:

342-5900, 342-0895 OR 342-0896

1-800-259-5300 OR 1-800-259-5301

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000).

§8725. Claims Notice

A. Every surplus lines insurer which denies coverage of a claim on the grounds that the claim is excluded in whole or in part by the policy's Y2K exclusion shall provide the insured and the claimant, if the claimant is not an insured, the notice found in subsection C of this section.

B. Formatting instructions. The caption must be in large type and in bold. The text of the notice should be formatted as shown below and should be in a font of not less than 12 point type.

C. Claim Notice Text

IMPORTANT NOTICE FROM LOUISIANA DEPARTMENT OF
INSURANCE
PLEASE READ IT!

POLICY No. _____

CLAIMANT: _____

CLAIM No. _____

COVERAGE FOR THIS CLAIM HAS BEEN DENIED BECAUSE
YOUR INSURER HAS DETERMINED THAT THE Y2K
ENDORSEMENT ATTACHED TO THE POLICY EXCLUDES
COVERAGE FOR THIS TYPE OF LOSS.

IF YOU QUESTION THE DENIAL OF COVERAGE, YOU MAY
CONTACT THE LOUISIANA DEPARTMENT OF INSURANCE AT THE
ADDRESS LISTED BELOW:

COMMISSIONER JAMES H. "JIM" BROWN
LOUISIANA INSURANCE BUILDING
950 NORTH FIFTH STREET

BATON ROUGE, LA 70802

OR BY TELEPHONE:

342-5900, 342-0895 OR 342-0896

1-800-259-5300 OR 1-800-259-5301

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000).

§8727. Issuance of Notices

Responsibility for the issuance of the notices required by
Sections 8723 and 8725 of this subchapter may be delegated

to the local surplus lines broker responsible for placing the coverage. Notwithstanding the foregoing, the surplus line insurer, upon request of the Commissioner, must be able to show that it has procedures in place to assure compliance with this subchapter.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000).

Subchapter D. Administrative Actions

§8729. Hearings

Hearings, including investigatory hearings, which arise under the provisions of this regulation shall be conducted by the Commissioner.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq., and LRS 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:88 (January 2000).

§8731. Penalties

Upon proof of noncompliance with any applicable provisions of this regulation by an insurer, such disciplinary actions and/or penalties as are authorized by law, and in the manner provided thereby, may be imposed by the Commissioner.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq., and LRS 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:88 (January 2000).

James H. "Jim" Brown
Commissioner of Insurance